INTERSECTION

Where immigration law overlaps other areas of practice.

BY REHAN ALIMOHAMMAD

Immigration law often overlaps with numerous other legal areas. This article covers certain immigration concepts that intersect with other areas of practice.

LABOR AND EMPLOYMENT LAW

Besides the I-9, which must be complied with when hiring employees, there is the L-1, H-1B, and labor certification counsel may have to deal with. The H-1B is a work visa that requires the company to maintain a public disclosure file, as well as an offer of a return ticket back to the alien's home country, in the event employment is terminated prior to the end of the validity period. The company also must pay the promised wage per the H-1B application that was filed regardless of "benching" the employee. It is also important to understand that the regulations prohibit the employee from paying or reimbursing government or attorneys' fees in connection with filing an H-1B application.

An L-1 visa is an intercompany transfer visa that requires a qualifying relationship between a U.S. company and a foreign company and control by an entity over another. The employer should also maintain control over the employee. In a corporate law context, if there is a restructuring that alters the qualifying relationship, the L-1 visas could be placed in jeopardy.

The labor certification is one step toward obtaining an employment-based green card for someone. There are recruitment requirements, as well as an audit file, that must be retained for at least five years from approval.

LITIGATION

An EB-5 visa allows someone to obtain permanent residence by investing either $500,000 or $1 million in a business, as it stands at the writing of this article. The E-2 visa is a non-immigrant treaty investor visa that allows people from certain countries that have a treaty of commerce and navigation with the U.S. to receive a visa by investing a substantial amount of capital in a U.S. business. When there are large sums of money at stake, a disagreement about the handling of money can easily lead to litigation.

FAMILY LAW

For immigration purposes, a marriage is valid under the law of the jurisdiction in which the ceremony is performed. For immigration purposes, marriage is not merely a certificate, the marriage must be "bona fide" for green card purposes, and the spouses must be living in a "marital union" for naturalization purposes. A conditional green card is one that is received when the marriage has existed for less than two years. To remove the condition and extend it beyond the two years, the applicant must show a bona fide marriage unless an exception applies. In a non-immigrant visa scenario, living separately does not terminate a spouse beneficiary's status, but divorce does.

Children can also receive benefits through their parents. According to the Immigration and Nationality Act, or INA, the definition of a child is "an unmarried person under 21; a stepchild where the step relationship is created by a marriage before the person reaches 18 years of age; a person adopted while under the age of 16, if the child has been in the legal custody of, and has resided with the adopting parent(s) for at least 2 years; or has been battered or subject to extreme cruelty by the adopting parent or by a family member of the adopting parent residing in the same houshold. A sibling of an adopted child can be adopted by the same parents while under 18 years of age. It also includes a person under age 16 when the petition is filed by a U.S. citizen for an orphan because of death or disappearance of, abandonment or desertion by, or separation or loss from both parents or for whom the sole parent is incapable of providing the proper care and has released the child for adoption."[1]

The INA states that any alien (anyone other than a U.S. citizen) who is convicted of a crime of domestic violence, stalking, child abuse, abandonment, or neglect is deportable. "For purposes of this clause, the term 'crime of domestic violence' means any crime of violence against a person committed by a current or former spouse of the person, by an individual with whom the person shares a child in common, by an individual who is cohabiting with or has cohabited with the person as a spouse, by an individual similarly situated to a spouse of the person under the domestic or family violence laws of the jurisdiction where the offense occurs."[2]

Further, any person who is enjoined under a protection order issued by a court from credible threats of violence, repeated harassment, or bodily injury, and then engages

in conduct in violation of that order against the person or persons for whom the protection order was issued, is deportable. Protection orders, under immigration law, are defined as "any injunction issued for the purpose of preventing violent or threatening acts of domestic violence, including temporary or final orders" but excluding "support or child custody orders or provisions."[3]

The Violence Against Women Act, or VAWA, allows certain persons who are battered or subject to extreme cruelty to petition for lawful status. An individual is eligible to self-petition for lawful status if the individual is the battered spouse, or child of a legal permanent resident or U.S. citizen. Also eligible are parents of a U.S. citizen. Despite the title of the act, "spouse" can apply to men or women. A spouse is still eligible under VAWA if he or she is already divorced or the marriage has been terminated by death, if the petition is filed within two years of marriage.

A U visa is a path to nonimmigrant status available to victims of certain crimes who have suffered mental or physical abuse and are helpful to law enforcement or government officials in the investigation or prosecution of the criminal activity. Qualifying crimes include, but are not limited to, domestic violence, stalking, sexual assault, rape, and attempted rape.[4] Three years after being granted a U visa, a victim may apply for legal permanent resident status for themselves, as well as qualifying relatives.

CRIMINAL LAW

The statutory definition of a conviction with respect to an alien is a formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where: a judge or jury has found the alien guilty or the alien has entered a plea of guilty or of nolo contendere, or has admitted sufficient facts to warrant a finding of guilt, and the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed.[5]

For immigration purposes, deferred adjudication is a conviction. Pretrial intervention agreement under Texas law can now qualify as a conviction for immigration purposes under a recent ruling.[6] A juvenile conviction is not a conviction for immigration purposes.[7]

Section 212 of the INA is the standard that applies to aliens when they enter the country, whereas section 237 applies to aliens already in the country. A person with a possession of marijuana conviction for 30 grams or less for one's own use is not deportable/removable under section 237, but she or he would be inadmissible into the country because of section 212. Further, a person who has a DWI may not be removable but could be inadmissible under the grounds of having a mental disorder, such as alcohol abuse, where she or he is a danger to others.

In *Padilla v. Kentucky*, the U.S. Supreme Court held that counsel in a criminal matter "must inform her client whether his plea carries a risk of deportation" as part of an individual's Sixth Amendment right to counsel.[8] This means where a defense attorney fails to advise his client of the potential deportation consequences of a guilty plea, it may constitute ineffective assistance of counsel under the Sixth Amendment.[9] Where the law clearly states the alien would be deportable, the criminal attorney must inform his client of deportation consequences.[10] On the other hand, if the law is unclear, typically where a crime of moral turpitude is involved, the criminal attorney need only advise his client to seek the assistance of an immigration attorney. Advisals by the judge do not substitute for the attorney's obligation.[11] The holding was not retroactive, and the alien must show prejudice due to the failure.

For naturalization, one of the seven requirements is good moral character. INA 101(f) does not define what is good moral character but instead defines what it isn't, and also states that anything not listed shall not preclude a finding that for other reasons such person is or was not of good moral character. A good rule of thumb: a conviction of any kind or probation during the preceding five-year period could lead to a finding that the applicant is lacking good moral character and may lead to a denial of the application.

Immigration laws can be very stringent, and compliance with certain laws and procedures is mandatory. Discussing possible immigration overlap with an experienced immigration attorney may be beneficial. **TBJ**

NOTES

1. INA 101(b)(1).
2. INA 237(a)(2)(E)(i).
3. INA 237(a)(2)(E)(ii).
4. INA 101(a)(15)(U).
5. See 8 USC 1101(a)(48)(A); INA 101(a)(48)(A).
6. See *Matter of Mohamed*, 27 I&N Dec 92 (BIA 2017).
7. See *Matter of Devison*, 22 I&N Dec 1362 (BIA 2000).
8. *Padilla v. Kentucky*, 130 S. Ct. 1473 (2010).
9. *Id*.
10. *Id*.
11. *USA v. Batamula* (5th Cir. 2015).

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